



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/159530

PRELIMINARY RECITALS

Pursuant to a petition filed June 04, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Disability Determination Bureau (DDB) in regard to Medical Assistance (MA), a telephonic hearing was held on September 11, 2014.

The issue for determination is whether the petitioner is disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: No Appearance

Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Winnebago County.
2. The petitioner applied for medical assistance through the Medicaid Purchase Plan (MPP) on December 13, 2013. The DDB most recently denied her application on July 30, 2014.
3. The petitioner is 45 years old. She graduated from high school.

4. The petitioner is diagnosed with spina bifida, hypertonicity of the bladder, dyslipidemia, Coronary Artery Disease, and obesity. She has had bilateral hip replacements and toe amputations in the past. She walks with a distinct limp and wears AFOs. She does not use a walker, crutches, or cane for ambulation.
5. The petitioner works 40 hours per week for a temp agency in their accounts payable department. The majority of her work involves being seated doing computer-based activities. She drives herself to and from her place of employment. She has worked there since November 2010.

DISCUSSION

The MPP allows those who are disabled but wish to work to receive medical assistance. Wis. Stat. §49.472. Before Wisconsin received an exemption from the federal government that allowed it to offer the MPP, those employed at least half-time were barred from receiving MA as a result of a disability. Among the requirements to receive benefits under the MPP program is the following: “The individual is engaged in gainful employment or is participating in a program that is certified by the department to provide health and employment services that are aimed at helping the individual achieve employment goals.” Wis. Stat. §49.472(3)(g). The petitioner meets this requirement because she works 40 hours per week in an accounts payable position.

To qualify as disabled, even under the MPP, a person must meet the definition of that term as it is used for Supplemental Security Income (SSI). Wis. Stat. §49.47(4)(a)4. SSI disability standards are found in the Code of Federal Regulations, Title 20, Part 416, Subpart I, and by reference Appendices 1 and 2, Subpart P, Part 404. Specifically, to be disabled means to be unable to engage in any substantial gainful activity because of a medically determinable physical or mental condition that will, or has, lasted at least twelve months. To determine if this definition is met, the applicant’s current employment status, the severity of her medical condition, and her ability to return to vocationally relevant past work or to adapt to new forms of employment are evaluated in that sequence. 20 C.F.R. § 416.905 and § 416.920.

Employment alone cannot bar an applicant from receiving MPP benefits or the entire purpose of the program would be undermined. Therefore, in these matters it is necessary to move directly to the next step, which is for the DDB to determine if she has a “severe impairment.” A severe impairment is one that limits a person’s ability to do basic work activities. 20 C.F.R. §416.921. The DDB found that petitioner has a severe impairment and I will not disturb that determination.

The DDB was then required to determine whether the petitioner has an impairment that meets or equals a listed impairment found at Appendix 1, Subpart P, Part 404. The listings are impairments that are considered disabling without additional review. 20 C.F.R. § 416.925(a). The DDB found that she meets or equals none of the listings. She has several impairments, with spina bifida being the most serious. Spina bifida is a type of birth defect called a neural tube defect. It occurs when the vertebrae don't form properly around part of the baby's spinal cord. As such, it is evaluated under the listings for the Musculoskeletal System. Appendix 1, §1.00. Of those listings, the only one that could relate to petitioner is §1.02 *Major Dysfunction of a Joint*. The result of this listing is the “inability to ambulate.” The “inability to ambulate” is defined as follows:

What We Mean by Inability To Ambulate Effectively (1) *Definition*. Inability to ambulate effectively means an extreme limitation of the ability to walk; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a

hand.)(2) *To ambulate effectively*, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

Petitioner walks without a walker, crutches or canes. She drives to work and to get out into the community for shopping and the like, and carries out her activities of daily living, living alone. The evidence before me does not show that she has the extreme limitation of the ability to walk contemplated under these regulations. This, despite her obvious impairments which contribute to her leg weakness and back pain.

The fourth and fifth steps occur if the impairments do not meet the listings. The DDB must determine whether the person is able to perform past jobs. If not, then the agency must determine if the person can do any other types of work in the society that would be considered substantial gainful activity. 20 C.F.R. §416.960. Petitioner's past work is substantially similar to her current employment. The DDB found that petitioner is not limited sufficiently to prevent her from working. Again, although disqualifying an applicant from the purchase plan merely because she can work would undermine the program's stated goal of allowing disabled persons to work, past decisions have looked at whether the person requires significant accommodations to do the work. See *DHA Decisions No. MAP-60/48115, No. MDD-03/58813, MAP-9/68575, MAP/141868 and MAP/150857*. The evidence indicates that she can perform her work without any special accommodations.

Further, in order to decide if a person can do any work, other than previous work that the person has done, the person's Residual Functional Capacity (RFC) must be considered -- along with the person's age, education, and work experience. 20 C.F.R. §416.945. A person's RFC is what the person can still do despite the person's limitations. It is an assessment based upon all the relevant evidence. 20 C.F.R. §§416.929 & 416.945.

A limited ability to perform certain types of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce the persons' ability to do past and other work. 20 C.F.R. §416.945(b). Pain and other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; e.g., someone with a low back disorder may be fully capable of the physical demands consistent with those of sustained medium work activity, but another person with the same disorder, because of pain, may not be capable of more than the physical demands consistent with those of light work activity on a sustained basis. In assessing the total limiting effects of a person's impairment(s) and any related symptoms, all of the medical and nonmedical evidence must be considered. 20 C.F.R. §416.945(e).

In evaluating the intensity and persistence of a person's symptoms, all of the available evidence, including the person's medical history, the medical signs and laboratory findings, and statements from the person, the person's treating or examining physician or psychologist, or other people about how the person's symptoms affect them must all be considered. 20 C.F.R. §416.929(c)(1). Because symptoms, such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restriction which the person, the person's treating or examining physician or psychologist, or other people

report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account as follows: the person's symptom's, including pain, will be determined to diminish the person's capacity for basic work activities to the extent that the person's alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 C.F.R. §§416.929(c)(3) & (4); See also, 20 C.F.R. §416.945(e).

The physical exertion requirements of work in the national economy [a person's "Residual Functional Capacity" or "RFC"] are classified as "sedentary", "light", "medium", "heavy", and "very heavy". 20 C.F.R. § 416.967. "Sedentary" work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 C.F.R. § 416.967(a). The DDB found petitioner capable of the sedentary RFC.

Based on the above law and on the evidence in the record of this matter, petitioner meets the "Sedentary" RFC requirements. She is 45, a high school graduate, literate and able to communicate in English. Her previous work is of at least a semi-skilled nature. See, 20 C.F.R. §416.968(b). Her skills are transferable. See, 20 C.F.R. §416.968(d)(4). Therefore, I must find petitioner to be not disabled.

In making this decision, I do not question that the petitioner has significant physical limitations. However, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable ("fairness") arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The petitioner is not disabled for MPP purposes.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

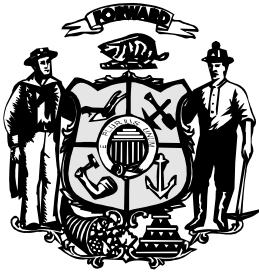
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of September, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 18, 2014.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability